THE COURTS.

The Fourth Day of the Trial of Mayor Hall on the Alleged Ring Frauds.

GARVEY AGAIN ON THE STAND.

Continuation of the Chief Plasterer's Direct Testimony and Cross-Examination.

SPECULATIONS ON THE RESULT.

Counsel on Either Side Hold a Consultation, but Fail to Agree, and the Court Adjourns Till To-Day.

Indictments Against Members of the Last Year's Board of Aldermen.

Commodore Vanderbilt and the Great Central Depot.

Rose McCabe, Sister Mary of Stanislaus, the Alleged Lunatic, Again in Court.

A SPEEDY DELIVERANCE PROMISED.

The Boulevard and Uptown Avenue Improvements Litigation Settled—Judicial Opinion Thereon.

More Charges of False Registration and Opposition to Domiciliary Visitations—Arrests by City Marshals.

HOT TIMES FOR DAVENPORT.

Business in the Other Courts—The Powers of City Marshals and Sheriffs Co-Ordinate—Opinion on an Appeal Case from the Marine to the Supreme Court—Convictions and Sentences in the General Sessions—Decisions, &c.

THE TRIAL OF MAYOR HALL.

The trial of Mayor Hall was resumed yesterday morning, in the Court of Oyer and Terminer, before Judge Brady. This, the fourth day's proceedings, brought the case for the people to a close. The decision of Judge Brady to exclude evidence that was in his judgment irrelevant and which failed to connect the defendant with that which was proposed to be testified to shortened the case of the prosecution considerably. Though the court room was crowded throughout the day there was very little incentive to excitement or popular feeling in the testimony of the principal witness, Garvey, or in the remarks of counsel for the defence or the prosecution. Garvey, the prince of plasterers, was again put on the stand, but his revelations amounted to nothing, and if he knows nothing more implicative against "Boss" Tweed and the rest of them than he knows against the Mayor the reform prosecution have got an elephant on their hands they will be glad to get rid of before the finale of their series of intended prosecutions is reached. The proceedings yesterday would have been unusually flat and uninteresting had it not been for the Mayor's note,

ALL ABOUT "THE LITTLE FOX."

After the hour fixed by the Court for the recess—half-past one—had long passed away there was no sign of a resumption of the proceedings. Judge Brady—more reliable on all occasions than even

"OLD PROBABILITIES,"

was, for once, long behind time. The judicial clock actually felt the moments pass heavily on its hands, as if ashamed to note the syllables of recorded time during his absence, and if it had been possible for it to blush, when, at twenty minutes past two, Judge Brady entered, and then Valentine and the rest of the Court officials, whose duty it is to rap on the tables for silence or to call out "Hats off in Court," and to spread a general awe over the audience by a threatening glance—that clock would certainly have blushed for Judge Brady's delinquency. It no doubt looked upon him, however, like Hamlet's father's ghost, more in sorrow than in anger, and continued "its motion" before the Court as if no interruption whatever had happened. On taking his seat, and just as Mr. Stoughton, at last turning to business, withdrew his fingers from coursing through his magnificent locks of perpetual snow, and Mr. Buckley, who was to have opened as counsel for the Mayor, poked his fiery-looking proboscis into his little carpetbag for a brief, the Judge, as cool as a cucumber, and just as if the clock aforesaid had been like all the other spectators, sitting or standing still, without having marked his absence, informed the jury that the case of Noonan, the alleged forger, would be adjourned over until to-day, and that he then and there would so adjourn it. The proceedings in the Mayor's case were opened by the recall to the witness stand of

ANDREW J. GARVEY.

Before this witness was examined Mayor Hall said that the short cross-examination previous to the adjournment of the Court on Friday had been begun by himself. In consequence of a cold that affected his throat he asked the permission of the Court that Mr. Buckley, his counsel, might continue that cross-examination.

The Court promptly assented.

Mr. Peckham said he had a few questions to ask the witness, Garvey, before the cross-examination was resumed.

By Mr. Peckham:—Have you, Mr. Garvey, looked for the note since the adjournment of the Court—the note that you spoke of in your evidence on Friday, written to you by Mayor Hall? A. Yes, and I have been unable to find it.

Q. Have you looked in all the places where you keep your papers? A. I have looked in every place where it was supposed I could find it.

Q. Now I ask you to tell us its contents. A. "Dear Garvey—I accept the trust. I look less at the fox and more at the grapes. Yours truly, Oakey Hall."

By Mr. Stoughton:—There was a fox on the silver, was there not? A. Yes, sir.

By Mr. Peckham—There were thirty-four warrants handed to you; will you state whether there was any foundation for serving of those bills? A. There was not any.

Q. Did you endorse and deliver them for Ingersoll? A. I did, sir.

Q. Those are the warrants endorsed by Ingersoll? A. Yes, sir.

Q. Are those the only warrants that bear Ingersoll's endorsement? A. Yes, that were presented to the Board of Audit.

Cross-examined by Mr. Buckley—When did you commence to work for the city and county, Mr. Garvey? A. Ten years ago.

Q. Is it not over fifteen years ago? A. Not so long as fifteen, but I think it is over ten.

Q. During that period you were employed on all descriptions of city work, were you not? A. Yes, sir.

Q. Was there ever a final settlement or liquidation of your accounts for the city? A. No, sir.

Q. Then in the Fall of 1871 your accounts in the city were unliquidated and unsettled? A. No, sir, not during the whole of that time.

Q. There was no final settlement? A. Yes, sir.

Q. Then there were open accounts of yours in the Fall of 1871? A. Yes, sir, I believe there were.

Q. At the close of your direct examination and at the close of your cross examination the Mayor asked you substantially whether you ever had any conversation with him on claims which you said were legal and proper? I understood from what you said that you did this. A. What I did say was that if they were unjust I would not be likely to say so. It would not be proper for me to say that they were unjust before a witness.

Q. Did you ever say to him in any conversation when there was no third party present that the claims were false and fraudulent? A. I cannot recollect; it might have occurred; I cannot remember it.

Q. Now I want you to charge your memory? A. If I had some circumstance to jog my memory perhaps I might recollect it.

Q. Now jog your memory? A. I understand you to say, sir, that my claims were just.

Q. I ask you as to any conversation in which you told the Mayor that the claims were unjust or fraudulent? A. I don't remember; no, I don't know that there was that conversation.

Q. When you went over to the Broadway Bank you said that Woodward went over with you and you went in a coupe, and you spoke of taking it to the Comptroller's office; the place of deposit was on Mr. Watson's desk, was it not? A. Yes, sir.

Q. Who did you give that money to? A. I gave it twice to Woodward and once put it on Mr. Watson's desk.

Q. When you said you went over to divide the money with "the rest of them" did you include the Mayor? A. No, sir.

Q. That you said to one of the jurors, and you don't intend to include him now? A. No, sir; I do not.

Q. Those conversations that you spoke of were matters of which you did not make any memoranda at the time? A. No, sir.

Q. I mean at the time they occurred? A. I was always busy at those times, and since then many transactions have occurred; still they are very fresh on my mind, for I have not paid much attention to any other matters for the last two years.

Q. You had a conversation with Mayor Hall in the vestibule of the Court House, I think you said one day; I would like you to tell about what time it was in 1871. A. Well, it was about the first commencement of this excitement; it was the fore part of August.

Q. Where do you locate the scene? A. I could mark the spot exactly; it was near the front vestibule of this floor.

Q. Does your memory recall near which office it was? A. The Mayor stood near the Finance Department; I had my back turned to it; I think I had been to the Supervisors' office; I saw Mr. Hall and I took an opportunity to speak to him.

Q. Do you remember what errand brought you to the Court House on that day? A. No, sir; I cannot.

Q. Did you come suddenly across the Mayor? A. I don't remember; I met him in the vestibule, I think.

Q. Now, Mr. Garvey, in your direct examination you spoke of going to the Mayor's office, and at that time you had a conversation about the lawsuit; now, I should like to know if the conversation you had on the vestibule was after that? A. Yes; I think it was.

Q. You testified to the conversation in the Mayor's office in 1869 in answer to a question put to you by Mr. Peckham; will you fix as near as you can the date of that conversation? A. I think it was in August, 1869.

Q. Is that a matter of recollection or impression only? A. Well, I was stopping at Long Island, and I took these warrants down with me and put them under my pillow that night prior to getting them signed.

Q. Was any one present at that conversation between the Mayor and yourself? A. I think not.

Q. It occurred in the inner office? A. Yes, sir.

Q. When did you leave the United States, Mr. Garvey? A. On the 21st of September, 1871, if that was on a Saturday.

Q. Did your name appear in the list of passengers when you left? A. No, sir; I did not leave willingly, I can tell you.

Q. When did you come back to the United States? A. On the 20th of January, 1872; I crossed over on the train and reached New York on the 27th, I think.

Q. When did you sail from England? A. On the 2d of January, 1872, for Halifax.

Q. Have you given bail on any proceedings against you commenced by or on behalf of the people? A. No, sir.

Q. Have any proceedings been taken against you by or on behalf of the people? A. Civil suits.

Q. Criminal suits? A. Of my own personal knowledge I don't know anything about them.

Q. At all events you have not been arrested? A. No, sir.

Q. Have you ever had any communications with the representatives of the people respecting your testimony? A. Testimony, sir?

Q. Your evidence, sir. A. I have had conversations with the representatives of the people.

Mr. Peckham—He has talked with all of us, if that is what you mean.

Examination resumed—Q. Down to what period have you had any conversation with the representatives of the people, since the adjournment of this Court on Friday? A. Yesterday.

Re-direct examination by Mr. Peckham—Have you been working for the city about fifteen years? A. Yes, sir.

Q. Mr. Tweed was Supervisor during that time? A. Yes, sir.

Q. You spoke of having open accounts in the latter part of 1871; what do you mean by open accounts? A. There was some work done for the city in various places, and there had never been a final account given of it.

Q. I ask you whether Mr. Hall had any investigation into your accounts, or any discussion about them at all? A. No, sir; to the best of my knowledge, I don't recollect that he had.

Q. You were asked as to a conversation with Mr. Hall in the vestibule of the Court House; at that time those accounts had been made public, and were you in any anxiety as to your liability or under any disturbance about them? A. I was very much alarmed.

By the Court—The accounts were published at the time.

By a Juror—Q. Do you recollect what was meant by "I take the hint" in the Mayor's letter? A. I did not until I showed it to Mr. Ingersoll; there was a little fox on the grape scissors.

By Mr. Peckham—Q. What was the value of the present? A. I really don't know.

EVIDENCE OF THOMAS LOVE.

Mr. Thomas Love, an employé of the New York *Times*, produced copies of that journal for July 22, 24 and 26, in which statements of city accounts were published.

EXCLUDED TESTIMONY.

Mr. John H. Masterson was called, and subsequently Mr. R. S. Storrs and Mr. Anson E. Parkhurst, paying teller of the Broadway Bank. Their evidence was excluded by the Court, on the ground that it was irrelevant as regarded the accused. Mr. Masterson was to show the value of the plastering of the Court House; Mr. Storrs the condition of accounts of the Court House construction prior to April, 1870, and Mr. Parkhurst that certain amounts drawn from the bank were placed to the account of Mr. Woodward and Mr. Tweed.

EVIDENCE OF FREDRICK G. SMEDLEY.

Mr. Smedley said he was a counsellor-at-law and Mr. Garvey was a client of his in 1871; it was in the Summer of 1871; he went with Mr. Garvey to Mr. Tweed's office at 85 Duane street and there met Mr. Hall, who was attending, he understood, a meeting of the Board of Apportionment; Mr. Hall left the room and he said to Mr. Garvey, "I am very sorry I cannot do anything in the matter; I don't think there's anything for you to do in it;" Mr. Garvey said to the Mayor that "he hoped that transaction would not make any difference in their relations;" Mr. Hall replied, "I suppose not, it was a business transaction;" afterwards received instructions not to press the suit and to give the defendant time; nothing has ever been done about it.

This closed the evidence for the prosecution.

After a short consultation, Mr. Slaughter asked the counsel for the people whether they intended, on that evidence, to press for a conviction.

Mr. Peckham said that, answering for himself, he certainly did upon all the accounts, except Ingersoll's and Bollar's. He relied on Garvey's, Davidson's and Keyser's accounts.

Mr. Buckley asked that the recess might then take place, and the Court was adjourned until half-past one, it being understood that Mr. Buckley would open the defence on the reassembling of the Court.

After the Recess.

The counsel for the defence held a consultation in the court room until half-past two, and then Judge Brady said he thought it would be better to adjourn for the day, and upon that the Court adjourned until this morning at eleven o'clock.

The prosecution had just before the recess declined to say that they had any evidence to show that Mr. Hall assented to or was a participator in the division of the plunder. The proof, therefore, was under the following section of the statute:—

SECTION 38.—When any duty is or shall be enjoined by law upon any public officer or upon any person holding any public trust or employment, every wilful neglect to perform such duty * * * shall be a misdemeanor punishable as herein prescribed.

At twenty minutes past two o'clock the Judge arrived and explained that the delay was occasioned by the wish of the counsel at either side to consult. The consultation was in reference to an important element in the case; but the counsel had not been able to arrive at any conclusion, and as the hour was so late the Court would be adjourned to the following morning.

This was quite a new surprise, and to some extent made up for the dulness of the proceedings during the morning session. Speculation was, of course, busy in accounting for the adjournment and the nature of the consultation referred to. Nothing could be elicited from counsel on either side beyond the statement that they were consulting on a point of law to be submitted, and which, if ruled upon by the Court in favor of the views taken by the counsel for the defence, would bring the case to a speedy termination.

THE BOULEVARD AND UPTOWN ROADS AND AVENUES.

Judge Leonard's Decision.

Several weeks ago Mr. Van Nort, Commissioner of Public Works, applied before Judge Leonard, of the Supreme Court, for a mandamus against the Comptroller, directing the latter to deposit $4,479 15 in the Chemical National Bank as payment of Mr. McCauley for broken stone furnished for the Boulevard and the Seventh avenue extension above 110th street. In reporting the argument which issued the facts of the case were fully published in the HERALD, and for this reason do not require extended repetition. This was brought forward as a test case, there being several other claims of kindred character, and all depending, of course, upon the decision in this case. The fact is that since the transfer of the Boulevard, roads and avenues north of Fifty-ninth street from the control of the Department of Parks to the Department of Public Works no payments have been made by the Comptroller for material and lists furnished, the ground being that the act directing the transfer was unconstitutional. Pay even of the engineers, clerks and assistants has been withheld for three months, the laborers only being regularly paid. This state of facts led to the application for the mandamus in question. Yesterday Judge Leonard rendered his decision in the case, which we give in full below, and from which it will be seen the writ of peremptory mandamus as applied for is granted.

OPINION OF JUDGE LEONARD.

No objection has been raised as to the performance of the work, nor as to the delivery, price or quality of the materials furnished, for the payment of which Commissioner Van Nort now requires that money be deposited to his credit as Commissioner by the Comptroller of the city finances. The justice of the demand mentioned in the proceedings in that respect is not in dispute. The objection to depositing the money made on behalf of Comptroller Green relates to the constitutional validity of the act of June 3, 1872, transferring the powers and functions of the Department of Public Works in relation to the Boulevard road or public drive, streets, avenues and roads above Fifty-ninth street, not embraced within the limits of any park or public place, and directing the transfer of all powers conferred, and all duties devolved by law upon the Department of Public Parks in relation thereto, to and upon the Department of Public Works (Sess. L., 1872, chap. 872, sec. 7.) The title of this act is "An act in relation to the Croton Aqueduct and other public works in the city of New York." For the Comptroller it is insisted that the act, being of a local description, is in contravention of article 3, section 16 of the State constitution, forbidding more than one subject to be embraced in a local bill, and requiring that to be expressed in the title. It is not apparent, from the face of the proceeding, that the act of 1872 is at all subject to the criticism suggested. The improvement transferred to the Commissioner of Public Works is a public work, and that subject is distinctly expressed in the title of the act. The Croton Aqueduct and the Boulevard road and avenues are, each of them, public works. It is urged, however, that there are powers and duties authorized by law to be performed by the Commissioners of Public Works of a governmental character, which are also transferred by the act; that the Department of Parks is, by law, clothed with police powers, with the power to pass ordinances in respect to the parks, &c., and to punish for their infraction; also with the power to acquire or take private property for the use of the parks, &c., and that the act in question disturbs

THE DISTRIBUTION OF POWERS

between the departments under the city charter. These powers, it is insisted, are not within the scope of the title of the act. It is nowhere alleged in these proceedings that the Commissioner of Public Works has at any time exercised or claimed any of these objectionable powers and functions. It is not clear that any powers or functions were intended to be conferred, or duties devolved, upon the Commissioner of Public Works, under the act of 1872, other than those relating to construction and repair, and these are manifestly connected with the public works and expressed in the title. It is not unreasonable to hold that the powers and functions transferred are such only as relate to public works, and are similar to those which were conferred upon the Commissioner of Public Works by the charter of 1870, in respect to streets and avenues below Fifty-ninth street (vide Laws of 1870, chapter 137, article 8, creating the Department of Public Works and giving that department control of the Croton Aqueduct, streets and avenues, &c. A construction which allows the statute of 1872 to remain operative is to be preferred. The rules of law for the construction of statutes require acts of the Legislature to be so construed, unless the terms of the act render it impossible to give it a valid meaning in

HARMONY WITH THE CONSTITUTION.

The Department of Parks were authorized, until the act of 1872, to require the Comptroller to deposit money for the purpose of carrying on the same public work as that for which Commissioner Van Nort now demands that a deposit be made. The Commissioner of Public Works exercised the same powers and functions as those now claimed, under the Charter of 1870, in respect to streets and avenues in the lower portions of the city. It does not appear that it will be necessary hereafter to exercise the power of taking private property, nor of adopting ordinances for the regulation of the use of the Boulevard road, streets or avenues, nor of actually exercising any of the powers or functions tending to render the act obnoxious to the provisions of the constitution in the manner urged by the learned counsel for the defendant. It is not alleged by the Comptroller that Commissioner Van Nort has heretofore exercised any power under the act of 1872, except that of construction and payment for work and materials used upon these public works. The powers and functions which he has so exercised are legitimately expressed in the title of the act of 1872. The work of construction must cease unless

THE POWER OF PAYMENT

follows. The one cannot proceed without the other. It is not clear, however, that the act embraces more than one subject, if it really includes all the other powers mentioned, and supposed to be objectionable. The subject is the "public works" of the city. The regulation of the use of them, with police powers, &c., may be within that subject, at least during the period of construction. The power of preserving the work against trespassers and against either intentional or accidental injury may, I think, be considered as an incidental power, and embraced in the title, according to some of the decisions of the Court of Appeals in analogous cases, cited by counsel. It is not an illegal or improper exercise of legislative power to clothe the Commissioner of Public Works with such duties and functions. I intend to express no opinion on any question not strictly involved in the case now before me. The writ of peremptory mandamus is granted according to the application or order to show cause.

ALLEGED FALSE REGISTRATION.

The Case of Francis P. Healey.

Before Commissioner Davenport.

The defendant, Francis P. Healy, was brought up yesterday before Commissioner Davenport, charged with falsely registering as a voter. He stated that he is a lawyer, and claimed an examination.

Mr. De Kay prosecuted and Mr. Healy defended himself.

THE TESTIMONY.

A deputy marshal named Denning deposed that he was present when the defendant came to register his name as a voter, as living at 258 Mott street, second floor, back room; he saw him sign his name, and was present when he was sworn; heard the questions asked him by the Supervisor; witness then went to 258 Mott street, taking the accused in charge with another deputy; that was on the 26th of October, in the evening about seven o'clock; he asked the people he found in the room if Mr. Healy lived there, and they said distinctly, "No," that he lived in Fifteenth street; they did not give the number; they simply said he lived in Fifteenth street; did not ask them if he lived in Fifteenth street; did not know the persons he asked if Mr. Healy lived there; did not get their names; did not think it was necessary; when we went there Mr. Healy himself opened the door; he said he resided there; three or four women and a man were there; they said he did not reside there.

Cross-examined by defendant—I know you by sight; I think I have known you by sight for three years; I will not swear that I knew you as a resident of that neighborhood; I will not swear that I knew you live at 258 Mott street, because I do not know whether you did or not; I know nothing about it; I have not any impression that you did live there; I could not say exactly how many persons were in the room.

Deputy Marshal John Marten, colored, gave evidence in support of that of Denning.

DEFENCE.

The defendant called an old woman named McKenna, who resides at 258 Mott street, and she testified that she knew the defendant over a year, and that he had lived in her house during that time. With respect to the visit of the officers to the house on Saturday evening, with Mr. Healy, she said that when the question was asked, "Does this man live here?" she said, "He is a particular friend of mine," and by that answer she intended to refer to an old man, Mr. McIlvanny, who was in the room at the time the officers came in, thinking that the question applied to him. On cross-examination she said she saw both of the men who came into the room with Mr. Healy, and they were both white men. She did not take particular notice of them, as her sight was not very good.

Mr. Healy said the room was not well lighted at the time, and the witness might very easily be deceived as to the color of one of the officers, as her sight was not very good.

Another witness, named Margaret Rea, gave evidence in corroboration of that of Mrs. McKenna, adding that she believed the question as to "Where the man lived" applied to Mr. McIlvany, and after Mrs. McKenna answered, "he is a particular friend of mine," witness added "He lives in Fifteenth street." The witness was cross-examined by Mr. De Kay as to whether she had had any conversation with persons about the case. She replied in the negative. Commissioner Davenport whispered over to the District Attorney to ask the witness if she had been subpœnaed. She replied not, whereupon the Commissioner immediately popped the answer down on his minutes.

The defendant in the progress of the trial admitted that he had registered at 258 Mott street, second floor, back room; that he was born in the United States, and that this statement could be supported by the record.

The further hearing of the case was adjourned till ten o'clock this morning, when the defendant will offer further evidence for his defence.

Another Charge of False Registration.

Before Commissioner Shields.

The United States vs. Timothy Norton.—The defendant is charged with having falsely registered as a voter. Patrick Mack, election supervisor, deposed that on the 8th inst. Norton registered from 31 James street. Mrs. Deer testified that Norton left her house at 31 James street on October 1. This was the case for the prosecution. Case adjourned till Wednesday at two P. M.

Charge of Obstructing a Deputy Marshal.

Before Commissioner Betts.

The United States vs. Jeremiah Kelly.—The defendant has been charged with obstructing a deputy marshal who had gone into his house to put questions to him about his name, age, &c. The case was adjourned to such time as either party sees fit, on notice from the other, to bring it on. It appears to be the general impression that no step will be taken with these cases until after the election, if even then, and those who refuse to give their names when the marshals demand them will not be allowed to vote, on the pretence that the registration has not been verified according to Mr. Davenport's instructions.

Another Charge of Obstructing a Deputy Marshal.

Before Commissioner Davenport.

The United States vs. Charles Hussey. The defendant is charged with a violation of the Federal Election law for refusing to answer questions put by a deputy marshal, who stated to the accused that he came to take a census.

When the case was called on yesterday the Commissioner remarked that he could not go on with this examination now because he had to attend to a case of a man who was in jail.

Counsel for defendant said before the Commissioner came to that determination he would like to see the affidavit sworn against Mr. Hussey.

The Commissioner—It is not in my office.

Counsel asked the Commissioner if he kept his papers in his office.

The Commissioner—I keep them at my house. I did not bring the affidavit with me.

Counsel—We are ready for trial. We have a right to an examination and demand it. It is time, sir, that both you and those deputy marshals who are acting under your instructions should know that citizens have some rights that you are bound to respect. The arrest of Mr. Hussey was brought before you after an arbitrary arrest. I protest in the strongest manner against this man being kept out of an examination. He is entitled to it and ought to have it now. This is the day that was fixed for it.

The Commissioner—You are not entitled to an examination after you have given bail, and it is a mere matter of courtesy to give any man an examination after he has given bail. That question has been decided by the Courts.

Counsel—The case was put down for examination to-day.

The Commissioner—The case goes over for a week from next Thursday.

Counsel—Are we to understand, then, that the houses of our citizens are to be invaded in this unjust and unconstitutional manner?

The Commissioner—I do not understand you.

Counsel—You say that we are not to have an examination until Thursday week.

The Commissioner—And, perhaps, not then, if there are any jail cases for examination.

Counsel—Then there is no certainty that the case will even be called then?

The Commissioner—No, sir.

The case was accordingly adjourned for a week from Thursday next.

ARRESTS BY CITY MARSHALS.

Conrad Stein is a brewer, and employs John Ott as his driver to deliver beer to his customers. Ott, instead of delivering to the customers, sold, as alleged, part of the beer, and appropriated the proceeds to his own use, to the amount of about six hundred dollars, and in order to hide his peculations charged the stolen beer to the customers of his employer. Mr. Stein, having discovered these facts, applied to Judge Tracy, of the Marine Court, for an order to arrest Ott, who had in the meantime left Mr. Stein's employ. Judge Tracy directed his order to Patrick Dailey, one of the Marshals of this city, who finally arrested Ott, who was locked up in default of bail. The latter at once applied to Judge Ingraham, of the Supreme Court, for a writ of habeas corpus, claiming his unconditional release on the ground that the Marshals of the city of New York have no power to arrest, but that the Sheriff is the only authorized officer. In opposition to the writ Messrs. Jacob A. Gross and Cropsey appeared on behalf of Mr. Stein, and incidentally on behalf of the Marine Court, to sustain the order. Yesterday Judge Ingraham delivered the following opinion:—

JUDGE INGRAHAM'S OPINION.

The prisoner is brought before me on habeas corpus, and his discharge asked for from the Debtors' Prison or the custody of the Marshal by whom he was arrested. An order of arrest was granted by a Justice of the Marine Court and directed to a Marshal, who took the prisoner into custody. Prior to 1865 the law of 1857 provided that the warrant of arrest, which was then our mode for commencing action, should be served only by the Sheriff. The law of 1865 gave the Marshals of the city power to serve summonses and other process issued from the Marine Court. By the law of 1872, section 8, it is provided that all process except the summonses shall be directed to and executed by the officers as now provided by law. I think there can be no doubt that the intent of this provision was that all process should be served by the same officers who had authority to serve such processes before the passage of that law. If this process had remained a warrant of arrest, as it was before the passage of the act of 1872, there could be no doubt as to the power and authority of the Marshal to execute such process. By the act of 1872, section 6, the warrant of arrest as then allowed to issue was abolished, and a substitute adopted in the form of an order of arrest, to be granted by a Justice of the Court. This was to be applied for in the action, to be for like causes and in like manner as now required by the code of procedure. There is nothing in this section that alters or affects the provisions of the eighth section as to the officers who shall serve it. That duty is prescribed by the eighth section, and if the order of arrest is to be considered process (and both of the learned Justices of that Court, whose opinions have been submitted to me, agree that it is process), then I think there can be no doubt but that the same officers who could serve the warrant of arrest before the act of 1872 could serve the order of arrest under that act. This order of arrest is provided to be in the stead of a warrant of arrest, the mode by which it is to be obtained is prescribed in the eighth section; but no direction is given as to the service, and that direction is included in the general provision in section 8 as to the mode of execution of this as well as of any other process. My conclusion on this question is that the process was properly served and that the prisoner should be remanded and the writ of habeas corpus dismissed.

It will be seen from the foregoing opinion of Judge Ingraham that the power of the Marine Court to direct its orders of arrest to a city marshal has not been impaired by the act of 1872. Unfortunate debtors will hail this opinion with delight, as it will enable them to escape the extortions which are said to be practiced upon them in the Sheriff's Office.

THE CASE OF SISTER ROSE M'CABE.

The question as to the sanity or otherwise of the alleged lunatic, Sister Mary of Stanislaus, or Rose McCabe, as she is known in worldly circles, is about to be made again the subject of a judicial investigation. It is unnecessary, after the extended recitals given of her case, in connection with the recent legal proceedings, to go over the history. Her story (very simply told) is that while in a nunnery a high official in the Church undertook to coerce her into submission to his lusts, and because she would not submit to him trumped up a charge of insanity against her and put her in the Bloomingdale Lunatic Asylum, whence she was shortly transferred to the lunatic asylum on Blackwell's Island, where she is still confined. A writ of habeas corpus was a few weeks since obtained from Judge Leonard, of the Supreme Court, but before the examination was concluded Mr. John D. Townsend, her counsel, owing to the Judge's alleged prejudgment of the case, refused to prosecute the case further, and the result was that Miss McCabe had to go back to her old quarters. Mr. Townsend, who is not deficient in pluck, and sticks to his client through thick and thin, did not let the matter drop here. Two weeks ago he applied for

ANOTHER WRIT OF HABEAS CORPUS,

this time taking the case into the Superior Court and making the application before Judge Sedgwick. The writ was promptly granted, and the case came up yesterday for a hearing. Sister Mary was present, dressed as on former occasions in the sombre habiliments of her order. The court room was crowded, including among the throng of attendants

MANY LADIES,

some of the latter coming as witnesses, some from mere motives of curiosity and some through having had their sympathies deeply stirred for this unfortunate young lady.

A POSTPONEMENT ASKED.

Mr. Smith asked that the hearing in the case be postponed on account of the absence of Mr. Vanderpoel, the legal representative of the Commissioners of Charities and Correction. He stated that the absence of Mr. Vanderpoel was unavoidable, and urged that it was of great importance that the Commissioners of Charities and Correction should be represented at the examination by their counsel.

OPPOSING POSTPONEMENT AND WHY.

Mr. Townsend insisted that the examination should be entered upon forthwith. He went on to say that since the examination before Judge Leonard Miss McCabe had been transferred from the room she then occupied to another. This transfer was from the companionship of those suffering under the milder forms of insanity and from attendants to whom she had become attached and who were attached to her to a ward filled up with wild, raving maniacs, and among attendants who treated her with the harshest severity. He had been informed by letter of this transfer and the difference it made in the treatment and surroundings of Miss McCabe. He visited Miss McCabe yesterday and witnessed a most painful corroboration of the intimation he had received. Her surroundings he found of

THE MOST HORRID IMAGINABLE.

She was not only subjected to all kinds of indignities, but her room was overrun with rats and mice. She could not sleep nights on account of the annoying pranks of those vexatious visitors. While he was there a boldly audacious rat ran across the floor, and if they were thus bold in the daytime what must they be at night? This was not the worst. She was constantly subjected to hearing the

VILEST AND MOST OBSCENE LANGUAGE,

it was an outrage. This woman had been most religiously brought up; her mind and nature were of the most exquisitely refined mold, and to place her in her present surroundings was an indignity the enormity of which no language could adequately define. The door was ajar, and he heard Dr. Taylor say to some one, "Can't you get along without beating the patients in this way?" To keep Miss McCabe amid such surroundings was, as he had stated, an act of great cruelty, and for this reason it was he was so persistent in urging an immediate hearing.

Mr. Smith would not yield his point, but further pressed upon the Court the necessity of Mr. Vanderpoel's presence.

COUNSEL ASKS TO TAKE MISS M'CABE TO HIS HOUSE.

Mr. Townsend stated that he had said all he could for an immediate hearing. If the Court decided to postpone the examination he asked permission to take Miss McCabe to his own house. If this request was complied with he pledged himself to be responsible for her attendance in Court whenever required.

ENDING OF THE MATTER.

Judge Sedgwick said he could not entertain the supposition of the possibility of such a state of things existing as that described by the counsel.

Mr. Townsend—I will make my own affidavit in the case.

Judge Sedgwick—I cannot assume such a state of facts, but I do think the case one requiring a speedy investigation, and I will set it down peremptorily for Friday.

Mr. Townsend—Of course I must submit to the decision of the Court. One thing is very certain, however, that if Miss McCabe is not now crazy she soon will be if she is much longer kept amid her present surroundings.

BUSINESS IN THE OTHER COURTS.

UNITED STATES DISTRICT COURT—IN BANKRUPTCY.

Decisions.

Yesterday Judge Blatchford rendered his decision in the case of Theodore E. Baldwin and Edward W. Burr, bankrupts. He decides that the order of reference is vacated, leaving the parties respectively to pay their own costs.

The Examination of Bankrupts.

Mr. John Fitch, Register in Bankruptcy, presented to Judge Blatchford a very long certificate in the case of Nathaniel Dole, on a question as to the right of an assignee to examine a bankrupt two years subsequent to the discharge of the bankrupt. The Register decides:—

First—That the summons to examine the bankrupt was authorized by law; that the assignee was in duty bound to apply for and obtain it as he did upon ascertaining the facts as set forth in his affidavit; that the proceedings are correct and should be proceeded under; that the act of Congress, July 1, 1872, controls the practice as to the time of the commencement of an action in a case like this, and the limitation of two years in section 2 of the Bankrupt Act does not only apply in this case, and that clause 6, section 21 of the code of practice or procedure of this State does.

Second—That an assignee has a right to select, subject to the approval of the Register, an attorney to aid him in the prosecution of claims due the estate.

Third—That Mr. Dole can be examined as a witness upon the application of the assignee in relation to any property or effects of his estate, and to discover what, if any, effects of said Dole passed to the assignee under and by virtue of the assignment. That the assignee was in duty bound to do so after the facts set forth in his affidavit came to his knowledge, &c.

Fourth—That the declination on the part of Mr. Dole to be sworn as a witness previous to the final decision of the legal question raised by the filing of the preliminary papers does not in any way or manner constitute a contempt of Court as contemplated by law.

Upon the above points Judge Blatchford decides:—

The second and fourth objections are well taken. The first and third objections are not well taken. Nothing is intended to be decided hereby as to the point respecting the statute of limitations. It is not proper to decide that point until it is raised directly in a formal suit. On the second objection the Register ought to suspend all further proceedings under the order and the summons. No ground is shown for now permitting the submission of affidavits on behalf of the assignee.

SUPREME COURT—CHAMBERS.

Decisions.

By Judge Ingraham.

St. John vs. Coleman.—Motion granted.

Mills vs. Quigley.—Motion denied, with leave to renew on the ground of irregularity on other papers.

Spring vs. Burroughs et al.—Motion granted.

Gilbert et al. vs. Gilbert et al.—Motion granted, with leave to plaintiff to answer on payment of $10, cost of motion.

In the matter of the petition of Daniel S. Youngs, to vacate assessment for the paving of North Moore street.—Motion denied.

The People ex rel. Baker vs. A. H. Green, Comptroller, &c.—Motion granted.

The People, &c., Globe Printing Company vs. A. H. Green.—Motion granted sending the case to the Circuit for trial.

By Judge Fancher.

In the Matter of the Petition of Daniel S. Youngs to vacate assessment for paving North Moore street.—Motion denied.

Hallgarten et al. vs. Eckert et al.—Motion granted.

Kornigsberg et al. vs. Kornigsberg et al.—Same.

COURT OF OYER AND TERMINER.

The Grand and Petit Juries and Case of Noonan, the Alleged Forger.

Before Judge Brady.

At the assembling of this Court yesterday the Grand Jury was discharged for the term and the Petit Jury until Thursday. In the case of Dennis Noonan, the alleged bank forger, Mr. W. F. Howe, his counsel, was present to urge his release upon the writ of habeas corpus granted by Judge Ingraham. The argument, however, was postponed till Wednesday, and there being no further preliminary business Judge Brady proceeded with the trial of Mayor Hall.

COURT OF GENERAL SESSIONS.

A Man Sent to the State Prison for Twenty Years for Outraging a Woman.

Before Recorder Hackett.

Nearly the whole of yesterday was spent in the trial of an indictment against John Campbell, who was jointly charged with Charles McGuire for committing the offence of rape. McGuire was tried and convicted early in the term, and sent by the Recorder to Sing Sing for twenty years. The complainant, Ellen Smith, testified that as she was walking through Varick street she was dragged into an alley by Campbell, who, after outraging her person, held her until his associate repeated the offence; that as soon as she could she screamed "Murder," which brought Officer O'Keefe and other citizens to her assistance. Campbell was arrested near the alley and he told the officer that he was in there with the woman. M. Price called a number of witnesses to prove that the complaining witness was not the hard-working woman she claimed to be, but was a common street walker. The jury, however, believed the story of her wrongs, it having been corroborated by the police officer. After a brief consultation they rendered a verdict of guilty.

His Honor the Recorder said that he did not see any reason why he should make a difference in the sentence passed upon McGuire and the prisoner. He sent Campbell to the State Prison for the period of twenty years.

Intemperance the Cause of Crime—Remarks of Assistant District Attorney Sullivan.

In the course of an address to the jury, yesterday, Assistant District Attorney Sullivan made the following observations:—

This is the closing day of the October Term, and I wish to impress one practical lesson on the members of the jury. We have tried parties accused of every grade of crime—the defendants being of every age and both sexes. In almost every instance it appeared that drunkenness was the occasion of the crime. Especially was this so with the young men. In these days of agitation for reforms I wish we could inaugurate a movement for social and temperance reform and save thousands of our boys who are in fearful peril. At the Tombs, on Saturday last, I was talking with Mrs. Foster, the worthy matron in charge of the women's department. She said, "The women here are generally sent because of drinking, and yonder (pointing to the boys' department) are the children of drunkards." You and I do not discharge our whole duty to the community when we try a case. What we learn here should prompt us in our social duties. I do not know how any man can do more good in this community than by efforts to promote total abstinence from intoxicating liquor. The Father Mathew societies are a great blessing, and hardly ever has one of their members been accused of any crime in this Court.

Attempt at Grand Larceny.

John Brown, who pleaded guilty last week to an attempt at grand larceny, was brought up and sent to the State Prison for two years and six months.

A Car Pickpocket Sent to Sing Sing.

Buck Watson pleaded guilty to an indictment charging him with stealing a pocketbook containing $75 on the 23d of this month from William Dix, a citizen of Maine, while riding on a Fourth avenue car.

The Recorder sentenced Watson to the State Prison for four years, observing that he was a professional pickpocket.

Edward Sackett, who was charged with stealing a bale of coverlets, valued at $145, on the 26th of September, the property of Bronold & Hoffman, pleaded guilty to an attempt at grand larceny. One of the firm interceded for the accused, and the Recorder, being satisfied of his previous good character, mitigated the sentence to imprisonment in the Penitentiary for six months.

Alleged Murder.

On motion of Mr. Howe, James Larkin, charged with shooting John Murphy, on the 21st of last January, was discharged. He stated that the evidence showed it was an accident.

Assistant District Attorney Sullivan informed His Honor that the witness could not be found, and Larkin was discharged on his own recognizance.

TOMBS POLICE COURT.

Stealing Silk—Mr. Bergh's Detective Genius of Arrest Again After a Poor Drayman—Skeleton Keys—The "Dock Rats."

One of the first cases of any importance brought before Judge Dowling yesterday was that of Charles Schmidt, who was accused of attempting to steal a roll of silk valued at $50 from John E. Davis, of 741 Broadway. Schmidt and a confederate, it is alleged, went into Mr. Davis' store on Saturday afternoon and asked to see some black silk. They were shown a lot of goods and remained examining for some time. While the salesman who was waiting on these gentlemen was engaged talking to them another salesman saw Schmidt put the piece of silk under his coat. He jumped over the counter, and, before Schmidt had time to turn around, he caught him by the collar, and the other man immediately made his escape. Schmidt dropped the silk on the floor. He was brought to the Tombs yesterday morning and fully committed for trial.

Michael Feeny, a tall, rough looking and muscular man, apparently quite poor, was arrested by one of Mr. Henry Bergh's intelligent agents for driving a sick horse troubled with the "epizoot." Michael did not relish this system of interference in his business, and he opened on Mr. Bergh and his agent in the choicest language known to truckmen, hackmen and others of that ilk.

The champion of "the poor beasts" was exasperated, and came to court to make the charge more certain. Feeny and Bergh's agent were standing near each other and almost immediately in front of Judge Dowling, when suddenly Feeny raised his arm, and were it not for the interference of an officer, would have struck the agent a heavy blow. A voice in the court room was heard to cry aloud,

"I want to give bail for this man, your Honor."

Judge—I won't take any bail now. I'll lock him up to teach him where he is.

Bergh (exultant)—That is right. That is right (getting quite warmed up). He used the most atrocious language to me and my agent, he did.

Feeny was taken below for a short time to repent of his ill-timed burst of temper, which destroyed the sympathy which he might, perhaps, have excited in the breast of His Honor the Judge.

Jeremiah Harris, a colored individual about forty years of age, who has several times figured in the Tombs on various criminal charges, was again arraigned before the bar of judgment yesterday. Jeremiah's latest line of business is to appear at the doors of private offices early in the morning, and, by means of skeleton keys, enter the places and go out again before the proprietors or any one connected with the establishments arrives. The prizes he secures in these raids are not very large in general—a few dollars' worth of postage stamps or, perhaps, a similar amount in small change. Sometimes, however, he has been known to secure a large amount of money by going into an office in the middle of the day, when the proprietor has gone out to lunch and locked the door of the office, leaving the safe open. Yesterday morning, about eight o'clock, Harris was at his old tricks at the office of Demas Barnes, 21 Park row, and he was luckily caught in the act by Benjamin D. Thompson, who had him arrested before he had an opportunity to take anything. He was charged with burglary and Judge Dowling held him to answer, in default of $2,500 bail.

Thomas Brophy, Thomas Lynch and Michael Moloney, three young "dock rats," were caught, Sunday night, going through Dey street with two tubs of butter, worth about $60, by Officer Flynn, of the Twenty-seventh precinct. He arrested the three and the butter was afterwards identified by Woodruff & Co., 300 Greenwich street. Judge Dowling held them to answer.

JEFFERSON MARKET POLICE COURT.

An Inhuman Husband Charged by His Wife with a Hideous Crime—Stealing a Coat.

Robert Burns, a plasterer, forty-two years of age, was brought up on complaint of his wife, charged with an attempt at rape on the person of his stepdaughter, a child six years of age. The certificate of a physician showed that the attempt had been made. He was committed in default of bail.

James Cummings, a tailor, went to Charles Schwarz, one of his employer's customers, and claimed he was sent for a coat which was to be made up. This was given him, and Cummings and the coat disappeared until the former was hunted up by an officer. James urged the purity of his intentions with much energy, but was committed to answer on the charge of grand larceny.

BROOKLYN COURTS.

CITY COURT—TRIAL TERM.

A Clerk Recovering Damages for Slander.

Before Judge Neilson.

James McMurray, a Fulton street jeweller, discharged from his employ a clerk named Edward Wild. A few weeks thereafter McMurray's store was robbed of $3,000 worth of jewelry, and Wild was arrested on suspicion and locked up in jail for a month. While incarcerated, McMurray publicly said that he had enough evidence to send him up for ten years, and that Wild knew the store was to be robbed. Wild was released without a hearing, and instituted a suit against McMurray for slander, claiming damages in the sum of $20,000.

The case was tried yesterday before Judge Neilson and a jury. McMurary said that when he uttered the words he believed them to be true, and had good reason to.

The jury rendered a verdict in favor of plaintiff for $250.

It seems that the police arrested another party for robbing the store, and that prisoner was sent to State Prison.

COURT OF SESSIONS.

A Gang of Alleged Burglars on Trial.

Before Judge Moore and Associates.

The work of trying a number of alleged burglars, known to the police as the silver gang, from the fact that their chief booty was silverware, was commenced yesterday. Two of the gang—Michael O'Brien and Thomas Brown, both young men—were placed on trial on the charge of having broken into and robbed Joshua R. Graves' house, 176 Washington street, of $80 worth of silverware. The principal testimony against them was that of one of their own gang, William Higgins, who turned State's evidence. Higgins swore that he entered the house with the prisoners, by the basement, and stole the property, which was afterwards sold to a woman in New York at whose house the gang put up. Higgins is also under indictment. Counsellor Greata, for the defence, endeavored to prevent his use as a witness in view of this indictment, but the Court ruled against him. It transpired, on the cross-examination, that Higgins had once been sent to the Penitentiary for three months, but "he didn't know what for."

The prisoners were convicted and remanded for sentence. The balance of the gang will be tried at once.

BROOKLYN COURT CALENDAR.

CITY COURT.—Nos. 99, 40, 312, 287, 85, 166, 27, 241, 271, 305, 231, 213, 246, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 330, 331, 332, 334, 336, 337, 338.

THE JOHN STREET DIAMOND ROBBERY.

The Official Report of the Police—List of Articles Stolen—The Mysterious Stranger Who Called on Mr. Keough—How the Robbery Was Committed—Detectives at Sea.

No new light has been thrown upon the diamond robbery at No. 9 John street, except the official report of the police. It appears that in the planning it was one of the neatest robberies committed here in many years, and the way in which the men went to work was quite sufficient to baffle a much smarter police than that under Captain Caffrey. The robbery was committed on the third floor, rear, of the building No. 9 John street, and Messrs. Ormsby & Keough are the victims. The robbers had undoubtedly secreted themselves on the roof, and when the various business men who occupy the building (they are all jewellers) had left on Saturday night they began their operations. It is evident that much of the habits of the proprietors must have been known to the burglars, for of all the safes in the building—and there were half a dozen of them—they chose just the one which could not resist the attack of

WELL ORDERED TOOLS.

It was an old-fashioned safe of little practical value. A number of the headquarter detectives now have the case in hand, and, as usual, they say they hope to be very soon able to unearth a clew which may lead to the arrest of the thieves. But it is certain that nothing has been done as yet by them. It is said, though vaguely, that the proprietor, Mr. Keough, remembers that some days ago a stranger entered his place with the ostensible purpose of buying some jewelry. The stranger led the conversation to safes, saying that he wished to buy one for the country. Mr. Keough had recommended several, and said, pointing to the old Urban safe in his office—the one which has since been broken open—"That one of ours is no good at all, anybody could break into it," or words to that effect, and he added that he was going to get another in a few days. It seems, of course, imprudent that he should have said this to a stranger; but then, supposing him to be a customer, he had not the slightest suspicion.

The value of the goods which have been stolen is $23,470. They consisted of the following articles:—

LIST OF ARTICLES STOLEN.

Twenty-one diamond rings, single stones, $7,000; one paper of diamonds, $3,000; five cameo sets, pins and earrings, oval, $750; one large diamond stud, $700; one set (two studs), skeleton settings, $350; one set (two studs), skeleton settings, $225; one pair solitaire diamond earrings, $500; one paper of small diamonds, $200; forty-eight amethyst rings, $1,000; thirty diamond and amethyst rings, $600; thirty seal rings, square, and black and red onyx, $350; thirty-five stone cameo rings, square and oval, $500; twenty garnet small stone rings, $150; one lot of roll chains, $400; forty pairs cameo sleeve buttons, $2,000; twelve cameo lockets, gold, $600; one lot of studs, cameo, $100; two diamond and green onyx crosses, $40; one black and onyx and pearl cross, $20; one pair of cameo earrings, pink, $50; one pink cameo pin, $50; one lot of earring settings, without stones, $400; one lot of stud settings, without stones, $200; seventeen unfinished single diamond rings, $170; one gold and gold fillings, $300; one open face English gold watch, Cooper maker, $50; one hunting case lever gold watch, $30; one lot of amethysts (square and oval), in package, $1,000; one lot of pearls (oval), in package, $600; one lot of forty-eight seal rings, imported, without stones, $600; thirty-six stone cameos (oval and round), for pins and earrings, $400; five sets imported cameos, without stones, $200; one lot of seal rings, stones, onyx and amethyst, emeralds, rubies and blood stones, $1,000. The following

PROMISSORY NOTES WERE ALSO STOLEN.

One note drawn by Benedict & Bros. for three months, $815; one note drawn by Benedict & Bros. for four months, $447; one note drawn by Benedick & Bros. for four months, $3,800; one note drawn by O. H. Kelly for three months, $206; one note drawn by George Stable for two months, $217; one note drawn by Albert A. Lincoln for four months, $113; one note drawn by Albert A. Lincoln for five months, $113.

The official report of Captain Caffrey continues:—The rear room door containing the safe was entered by false keys, and locked by them on leaving. The window and sash door separating this from the front room were darkened by oil cloth being thrown over them, so that no light could by any means be seen from the street. The robbers left the building between the hours of 6:40 and 8:30 A. M. on Sunday by the front door. The door had no marks of violence, and was opened from the inside.

ANOTHER BURGLARY.

The House of a Wealthy Uptown Resident Entered and Valuable Property Stolen.

On Sunday evening, between the hours of five and half-past nine, burglars, after having secreted themselves (so it is supposed) in a vacant house adjoining, succeeded in making their way into the dwelling of Mr. Daniel Benrimo, 201 West Thirty-eighth street. It is impossible to say at present how they got in, but it is supposed they made their way downward from the roof, as the scuttle was found forced open later in the evening. It may be, however, that they only escaped this way. The burglars descended from the top floor to the third, where there are several bedrooms, and went through them, appropriating everything they could find on their way. They happened to be very fortunate, as the family, of which only a small portion was at home, was in the basement at the time, and, singularly enough, the rooms were left alone and solitary all this time. No doubt, finding themselves unmolested, they descended one floor further, and entered the bedroom on the second story, where they were again fortunate in finding a number of valuable objects. They finally succeeded in getting away with the following articles:—One pair of gold bracelets, $100; one cameo breast pin, $75; one pair of sleeve buttons (D in centre), $35; one pair gold eye glasses, $25; one gold watch and chain, $190 (stem winder); one gold watch and chain, $75; one roll of money, $10. Total value of the stolen goods, $510. No clew has been found to the burglars.